(19)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 55 of 2003

Guha Ram @ Bhoog Satnami

Versus

State of Chhattisgarh

JUDGMENT

Post for: 17.05.2007

Sd/-
Sunil Kumar Sinha
Judge

(20)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 55 of 2003

APPELLANT Guha Ram @ Bhoog Satnami, aged about 35 years S/o Mangal Satnami, R/o Village Patori, P.s. Rajim, Distt.- Raipur (C.G.)

Versus

RESPONDENT State of Chhattisgarh Through P.S. – Ramim, Distt.- Raipur (C.G.)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri F.S. Khare, counsel for the appellant.

Shri Arun Sao, Govt. Advocate for the State.

JUDGMENT
(17.05.2007)

Sunil Kumar Sinha, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 24.12.2002 passed in Sessions Trial No. 265/2002 by the Sessions Judge, Raipur, whereby, the said Court, after holding the appellant guilty of the offence punishable under Section 376 I.P.C., sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.100/-, in default of payment of fine to further undergo R.I. for one month (same sentence in two counts), with a further direction to run the sentences of both the counts concurrently.

(2) The brief facts are that on 19.5.2002 and 21.5.2002, the prosecutrix namely- Sukaro Bai (P.W.-4), a girl aged about 15-16 years was subjected to forceful sexual intercourse by the appellant, who happens to be the step-father of the girl. The mother of the prosecutrix had married the appellant after death of her first husband namely- Bansi. Sukaro Bai was the real daughter of Bansi. After the second marriage of mother of Sukaro Bai, she along with her mother were residing with the appellant. Her mother died 2 months prior to the date of

incident. The allegations are that on 19.5.2002, in the night, when she was sleeping in the house at about 2 a.m., the appellant committed forceful sexual intercourse against her and he also threatened her to life. Subsequently, on 21.5.2002 at about 1.00 a.m., the appellant again committed forceful sexual intercourse with the prosecutrix. When she tried to raise the noise, the appellant pressed her throat and threatened that if she makes noise, he will kill her. On those days, father of the appellant namely Mangal (grand father of the prosecutrix) had gone out of station. When he returned back, the prosecutrix narrated the story to him. She also narrated the story to one Budhidai, Gowri Bai and Rahi Bai and thereafter, a report was lodged to the police station.

(3) During the course of investigation, the prosecutrix was sent for medical examination to Community Health Centre, Rajim and was examined by Dr. Snehalata (P.W.-6). In her examination, she found that her hymen was damaged and therefore, she referred her for further examination by Medical College Hospital, Raipur. Her report dated 25.5.2002 is Ex.-P/1. Thereafter, the girl was again examined by Dr. (Smt.) Anita Yadu (P.W.-1) on 25.5.2002, who found that hymen was not ruptured and reddishness was present over the hymen and there were no external injuries on the body. She prepared a report vide Ex.-P/1. The victim was also sent for ossification test and was examined by Dr. A.K. Gupta (P.W.-2), who took X-ray under Ex.-P/3 and submitted his report vide Ex.-P/2. According to his report, the girl was aged about 16 years. A transfer certificate of the girl (Ex.-P/8) was also seized, according to which, her date of birth was 7.11.1988. On 24.5.2002, the appellant was also sent for medical examination. He was examined by Dr. Virendra Kumar Girondia (P.W.-3), who prepared his report vide Ex.-P/4. According to the said report, there was an abrasion, on the skin of the penis which, according to Doctor, may have been caused during the course of sexual intercourse. He also opined that the appellant was physically able to perform sexual intercourse. In

further investigation, another certificate (Ex.-P/11) was seized by the police, which would certify that according to *Kotwari Panji*, her date of birth was 7.11.1986. After usual investigation, the charge-sheet was filed.

(4) The Sessions Court recorded a finding that the prosecutrix was below 16 years of age on the date of incident and on the basis of her evidence, it further recorded a finding that the forceful sexual intercourses were committed against her by the step-father on two occasions as is alleged by her.

(5) Learned counsel for the appellant has not disputed the finding of age recorded by the Session Court. He only argued that the version of the prosecutrix is unreliable and particularly in view of the medical evidence, in which, the hymen was found intact, she should be disbelieved.

(6) On the other hand, learned counsel for the State opposed these arguments. He supported the judgment of conviction and order of sentence passed by the Sessions Court.

(7) I have heard learned counsel for the parties at length and have also perused the records of the sessions case.

(8) Admittedly, the appellant is the step-father of the prosecutrix. According to the evidence of the prosecutrix, after 2 months from the date of death of her mother, on the first fateful night, she was sleeping in her house. Since the mother was dead, due to fear, she was sleeping in the room along with appellant. In the night, the appellant came to her and committed forceful sexual intercourse. When she tried to make noise, he poured the clothes in her mouth and after the intercourse, he threatened that she should not disclose this fact to anybody else. She says that she did not disclose the fact to other person due to fear. She further deposed that thereafter, on Sunday's night, the appellant again committed sexual intercourse against her. On that date, her grand-father namely Mangal was not in the house. When he returned back, she narrated the story to

him and she also narrated the story to her aunt namely Gowri Bai and thereafter her grand-father namely Mangal accompanied her to the police station and the report was lodged. The defence has not been able to vitally assail the above evidence of the prosecutrix and her evidence remains intact, so far as the commission of forceful intercourses by the appellant on the said two occasions are concerned.

(9) Mangal (P.W.-5), who is the father of the appellant, has also deposed that when he returned back to his house, the prosecutrix narrated the story to him saying that her step-father namely Guha Ram has committed rape against her, on which, he said that now she will sleep along with him. On his saying like this, the appellant retaliated and pressed hard that the prosecutrix will sleep along with him. He also assaulted the father on this count. In the evening at about 5.00 p.m., the appellant came in drunken condition and he started saying that he will kill him and he will also kill Sukaro Bai. He further deposed that while the prosecutrix was telling the story regarding sexual intercourse, she had also stated that she was subjected to forceful intercourse by the appellant on an earlier occasion also. His evidence is also intact on these points.

(10) The testimony of the prosecutrix is further supported by medical evidence of two lady Doctors namely Dr. Snehalata (P.W.-6) and Dr. Anita Yadu (P.W.-1), who have stated that they had noticed some injury on the hymen of the prosecutrix, though they have said that the hymen was not ruptured.

(11) Learned counsel for the appellant pressed hard saying that since the hymen was intact, therefore, the intercourse had not taken place and the conviction u/s 376 I.P.C. is not in accordance with law.

(12) I have considered these points.

(13) In the matter of **Tarkeshwar Sahu vs. State of Bihar (now Jharkhand)** reported in **(2006) 8 SCC 560**, the Apex Court held vide para 10 that under Section 375 of the I.P.C., six

categories indicated therein are the basic ingredients of the offence. The Supreme Court observed that in the facts and circumstances of the said case, where the prosecutrix was 12 years of age, her consent was irrelevant. The appellant had forcibly taken her to his Gumti with the intention of committing sexual intercourse with her. The important ingredient of the offence under Section 375 punishable under Section 376 of the I.P.C. is penetration which is altogether missing in the said case, the Apex Court said that no offence under Section 376 of the I.P.C. can be made out unless there was penetration to some extent. In the absence of penetration to any extent, it would not bring the offence of the appellant within the four corners of Section 375 of the I.P.C. Therefore, the basic ingredients for proving a charge of rape are the accomplishment of the act with force. The other important ingredient is penetration of the male organ within the labia majora or the vulva or pudenda with or without any emission of semen or even an attempt at penetration into the private part of the victim completely, partially or slightly would be enough for the purpose of Section 375 and 376 of the I.P.C. The Apex Court held in para 13 that

> "In order to constitute rape, what Section 375 IPC requires is medical evidence of penetration and this may occur and the hymen remain intact. In view of the Explanation to Section 375, mere penetration of penis in vagina is an offence of rape. Slightest penetration is sufficient for conviction under Section 376 IPC."

(14) In case of a girl of tender age, rupture of hymen, in the event of penetration, is not as a matter of rule. In cases where the hymen is deep seated, it may not rupture though there may be a penetration. In case of a forcible attempt to penetrate also, there are chances that the hymen of the victim may not rupture particularly when it is deep seated. The presence of redness and inflammation over the vagina is at least a sign that either a complete penetration has taken place or a partial penetration has taken place or a forcible attempt to penetrate was made against the victim. Modi opines in his Medical Jurisprudence

that in small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and the perineum. Please see **Modi's Medical Jurisprudence and Toxicology, 23rd Edn., page 928**.

(15) In the case of **Aman Kumar and another vs. State of Haryana** reported in **2004 Cr.L.R. (SC) 207** it has been observed by the Apex Court in para 7 that

> "The rupture of hymen is by no means necessary to constitute the offence of rape. Even a slight penetration in the vulva is sufficient to constitute the offence of rape and rupture of hymen is not necessary. Vulva penetration with or without violence is as much rape as vaginal penetration. The statute merely requires evidence of penetration, and this may occur with the hymen remaining intact. The *actus reus* is complete with penetration. It is well settled that the prosecutrix cannot be considered as accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence of rape. In examination of genital organs, state of hymen offers the most reliable clue. While examining the hymen, certain anatomical characteristics should be remembered before assigning any significance to the findings. The shape and the texture of the hymen is variable. This variation, sometimes permits penetration without injury. This is possible because of the peculiar shape of the orifice or increased elasticity. On the other hand, sometimes the hymen may be more firm, less elastic and gets stretched and lacerated earlier. Thus a relatively less forceful penetration may not give rise to injuries ordinarily possible with a forceful attempt. The anatomical feature with regard to hymen which merits consideration is its anatomical situation. Next to hymen in positive importance, but more than that in frequency, or the injuries on labia majora. These, viz. labia majora are the first to be encountered by the male organ. They are subjected to blunt forceful blows, depending on the vigour and force used by the accused and counteracted by the victim. Further, examination of the females

> for marks of injuries elsewhere on the body forms a very important piece of evidence. To constitute the offence of rape, it is not necessary that there should be complete penetration of the penis with emission of semen and rupture of hymen. Parietal penetration within the labia majora of the vulva or pudendum with or without emission of semen is sufficient to constitute the offence of rape as defined in the law. The depth of penetration is immaterial in an offence punishable u/s. 376 IPC."

(16) In light of the above decisions and also in light of the principles of medical jurisprudence, it cannot be held that since the hymen of the girl was intact, this is not a case of penetration either partial or complete and the offence u/s 376 I.P.C. would not be made out. The injury on the hymen and the un-assailed testimony of the prosecutrix supported by testimony of father of the appellant, who has deposed against his own son, make it clear that in fact, the prosecutrix was subjected to forceful sexual intercourse by the appellant for two times. There was not reason with the father to depose against his own son. The version of the prosecutrix inspires confidence of this Court so as to rely upon her and to base the conviction on her sole testimony, though she is corroborated by oral testimony of her grand father and medical testimony of two lady Doctors, who had examined her on two occasions.

(17) There appears to be no infirmity in the finding recorded by the Sessions Court that the appellant was guilty of offence punishable u/s 376 I.P.C. (in two counts).

(18) No other arguments, except above was raised before me.

(19) There is no merit in this appeal, the same deserves to be and is accordingly dismissed. The judgment of conviction and order of sentence passed by the Court below are maintained.

Sd/-
Sunil Kumar Sinha
Judge

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